

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Kari Smart as Administrator of the Estate of
Alyssa M. Burson and Cynthia Burson as guardian
And next friend of G.B.

Plaintiffs

v.

Strafford County, Strafford County Department of
Corrections, Strafford County House of Corrections,
City of Somersworth, Somersworth Police
Department, James McCoy,
Jesse Wentworth, Jennifer McDonald, Kyle
McLachlin, Miguel Morales, Laura Nosewothy,
Christopher Brackett, David Kretschmar, and
John/Jane Doe Defendants

Defendants

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* C.A. #1:22-cv-00436-PB

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DISCOVERY PLAN
Fed. R. Civ. P. 26(f)

DATE/PLACE OF CONFERENCE: February 10, 2023, via phone conference.

COUNSEL PRESENT/REPRESENTING: Nicole J. Schultz-Price, Brian Cullen, and Christine Friedman.

CASE SUMMARY

THEORY OF LIABILITY: § 1983 “Unconstitutional Failure to Provide Medical Care, Medical Treatment, and Monitoring” in violation of the Fourteenth Amendment claim; § 1983 *Moneill* claim; Violation of Title II of the Americans with Disabilities Act (ADA); and state law claims for wrongful death and loss of consortium.

THEORY OF DEFENSE: Defendants note that they are entitled to affirmative defenses as set forth in their pleadings. Defendants do not waive any defenses set forth in their Answer to Complaint and incorporate all their positions and defenses herein. See, also, motions to dismiss filed by certain Defendants.

DAMAGES: Alleged emotional and economic damages as described in Plaintiffs' Complaint.

DEMAND: December 24, 2020.

OFFER: May 26, 2022.

JURISDICTIONAL QUESTIONS: N/A.

QUESTIONS OF LAW: No unusual questions of law are anticipated.

TYPE OF TRIAL: Jury trial.

SCHEDULE

TRACK ASSIGNMENT: Complex.

TRIAL DATE: September 4, 2024.

DISCLOSURE OF CLAIMS AGAINST UNNAMED PARTIES: If defendants claim that unnamed parties are at fault on a state law claim (*see DeBenedetto v. CLD Consulting Engineers, Inc.*, 153 N.H. 793 (2006)), Defendants shall disclose the identity of every such party and the basis of the allegation of fault [no later than 30 days before the Joinder of Additional Parties deadline and 45 days before the Plaintiffs' Expert Disclosure deadline].

Plaintiff shall then have 30 days from the date of disclosure to amend the Complaint.

AMENDMENT OF PLEADINGS:

Plaintiff: June 1, 2023. Defendant: July 1, 2023.

JOINDER OF ADDITIONAL PARTIES:

Plaintiff: May 1, 2023. Defendant: June 1, 2023.

THIRD-PARTY ACTIONS: June 1, 2023.

MOTIONS TO DISMISS: August 31, 2023.

DATES OF DISCLOSURE OF EXPERTS AND EXPERTS' WRITTEN REPORTS AND SUPPLEMENTATIONS:

Plaintiff: January 15, 2024. Defendant: March 15, 2024.

Supplementations under Rule 26(e) due: Expert reports shall be in accordance with the requirements specified in Fed. R. Civ. P. 26(a)(2).]

COMPLETION OF DISCOVERY: April 15, 2024.

MOTIONS FOR SUMMARY JUDGMENT: May 1, 2024.

CHALLENGES TO EXPERT TESTIMONY: July 1, 2024.

DISCOVERY

DISCOVERY NEEDED: Interrogatories, Requests for Production of Documents relating to allegations of legal liability, as well as damages. Rule 30 (b) (6) depositions of both Plaintiff and Defendants.

MANDATORY DISCLOSURES (Fed. R. Civ. P. 26(a)(1)):

Plaintiff: February 24, 2023. Defendant: February 24, 2023.

INTERROGATORIES: A maximum of 25 interrogatories by each party to any other party or individual. Responses due 30 days after service unless otherwise agreed to pursuant to Fed. R. Civ. P. 29.

REQUESTS FOR ADMISSION: A maximum of 25 requests for admission by each party to any other party. Responses due 30 days after service unless otherwise agreed to pursuant to Fed. R. Civ. P. 29.

DEPOSITIONS: A maximum of 30 depositions by Plaintiffs and 30 depositions by Defendants. Each deposition limited to a maximum of 7 hours unless extended by agreement of the parties. The parties reserve the right to request additional depositions should discovery warrant.

ELECTRONIC INFORMATION DISCLOSURES (Fed. R. Civ. P. 26(f)): Plaintiffs have already received a significant amount of ESI pre-suit pursuant to RSA 91-A Requests.

Parties agree to preserve all ESI in order to avoid accusations of spoliation; all ESI shall be transmitted electronically to the extent possible; in the event privileged or trial preparation materials are inadvertently disclosed, the receiving party shall seasonably disclose to the sending party, information may only be used to impeach false statements.

STIPULATION REGARDING CLAIMS OF PRIVILEGE/PROTECTION OF TRIAL PREPARATION MATERIALS (Fed. R. Civ. P. 26(f)): Parties shall be required to produce privilege logs upon any claim of privilege leading to the withholding of discovery/documents.

OTHER ITEMS

SETTLEMENT POSSIBILITIES:

Unknown at this time.

JOINT STATEMENT RE: MEDIATION: If the parties agree to mediation, the parties shall use a private mediator. The parties shall file a joint statement regarding the status of mediation on or before May 1, 2024.

TRIAL ESTIMATE: Plaintiff 14 days; Defendants 5-7 days.

WITNESSES AND EXHIBITS:

- Witness and exhibit lists, include in final pretrial statements, are due 10 days before final pretrial conference but not less than 30 days before trial.

- Objections are due 14 days after filing of final pretrial statements.

PRELIMINARY PRETRIAL CONFERENCE: The parties do not request a preliminary pretrial conference with the court before entry of the scheduling order.

OTHER MATTERS: Not currently known.

Respectfully submitted,
Kari Smart, as administrator of the Estate of Alyssa M. Burson as guardian and next friend of G.B.

By their attorneys,
KAJKO, WEISMAN & COLASANTI, LLP

/s/ Nicole J. Schultz-Price
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Dated: February 21, 2023

Respectfully submitted,
City of Somersworth, Somersworth Police Department, Jesse Wentworth, James McCoy, and David Kretschmar
By their Attorneys,
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/s/ Brian J.S. Cullen
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Dated: February 21, 2023

Respectfully submitted,
Strafford County, Strafford County Department of Corrections, Strafford County House of Corrections,
Jennifer McDonald, Kyle McLachlin, Miguel Morales, Lara Noseworthy, and Christopher Brackett
By their Attorneys,
Friedman Feeney, PLLC

/s/ Christine Friedman

Dated: February 21, 2023

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this motion was served on the following persons on this date and in the manner specified herein:

Electronically Served through ECF:

/s/ Christine Friedman

Dated: February 21, 2023

Christine Friedman, Esq.